IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.4.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.15740 of 1998

Anna Marie Philomine @
Juthitha Ignace
.. Petitioner

vs.

1. Union Territory of Pondicherry
Pondicherry, represented by
Secretary,Revenue Department.

2. The Deputy Collector
Land Acquisition Officer
Pondicherry.
.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari, as stated therein.

For Petitioners : Mr.C.V.Vijayakumar
For Respondents : Mr.K.K.Sasidharan
Additional Govt. Pleader (Pondy)

ORDER:

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari, calling for the records of the respondents in connection with the impugned notifications issued under Section 4(1) of Land Acquisition Act vide G.O. Ms. No.78(Revenue Department) dated 4.10.1995 and published in the gazette of Pondicherry dated 24.10.1995 and issued under Section 6 of the Land Acquisition Act vide G.O.Ms. No.45 (Revenue Department) dated 23.7.1996 and published in the gazette of Pondicherry dated 6.8.1996 and quash the same.

2. The petitioner is the owner of the property (i.e.)lands measuring an extent of 0.34.20 hectares comprised in R.S. No.69/5 and T.S. No.30/9, Ward-C and Block 6 in Kompakkam village, Pondicherry. The above said lands originally belonged to petitioner's father who passed away 15 years ago and thereafter the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

petitioner succeeded to the property as the only heir of her father. Even during the life time of the petitioner's father, the lands were given on lease to a cultivating tenant by name Loganathan and after the death of the said Loganathan, his son has been enjoying the property as a cultivating tenant.

3. According to the petitioner, she had to leave for France along with her husband as her husband is employed in that country. Due to her prolonged stay at France, the petitioner could not change or mutate the revenue records, which continued to show her deceased father's name as owner.

4. The first respondent issued notification under Section 4 (1) of the Land Acquisition Act,1894 stating that the lands measuring an extent of 0.49.00 hectares including the petitioner's lands are needed for assignment of free house sites to the landless labourers at Kombakkam revenue village. The 4(1) Notification was issued in G.O.Ms. No.78 (Revenue Department) dated 4.10.1995 and the same was published in the Gazette dated 24.10.1995. In the 4 (1) notification, the petitioner's deceased father's name alone was shown as the owner of the lands. Thereafter, first respondent issued a declaration under Section 6 of the Act vide G.O.Ms. No.45 (Revenue Department) dated 23.7.1996, which was published in the Gazette dated 6.8.1996. In the said declaration also, the name of the deceased father of the petitioner was shown as the owner.

5. It is the case of the writ petitioner that her tenant informed her that lands are covered by the acquisition after the tenant was informed by 2nd respondent about the same when 2nd respondent came for an inspection. Hence she filed the above writ petition challenging the acquisition proceedings.

6. A counter affidavit was filed by the respondents wherein it is stated that notice was affixed in the name of the petitioner's father at the last known address and a personal notice was also served on the cultivating tenant Purushothaman son of Loganathan on 2.11.1995. It is further pointed out by the respondents in their counter that the award itself was passed on 27.3.1997 and the lands were taken possession on 11.8.1997 and on the same day, the lands were delivered to the requisition department. Therefore, the entire lands vest with the Government free of encumbrance and there are no merits in the writ petition.

7. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents. I have also perused the documents filed and the judgments referred to in support of their submissions.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8.The learned counsel for the writ petitioner submits that as the fact of serving the notice on the dead person was admitted by the respondents, the entire proceedings are initiated on the ground that 4(1) Notification itself was served on a dead person.

9. Per contra, the learned Additional Government Pleader, Pondicherry, submitted that even though the father of the writ petitioner passed away 15 years ago, the revenue records were not mutated at the behest of the writ petitioner and hence, the service effected on her father's last known address is a valid service. He further pointed out that the cultivating tenant's name was also shown in the 4(1) notification and the cultivating tenant was personally served with the notice. The learned Additional Government Pleader further questioned the maintainability of the writ petition on the ground that acquisition proceedings could not be challenged after the award was passed and the property was taken possession by the Government. In support of his contentions, he relied on the following decisions, (i.e.)

1) 1997(6) SCC 207 (W.B.Housing Board vs Brijendra Prasad Gupta.

2) A.I.R. 2000 SC 671(Municipal Council, Ahmednagar vs. Shah Hyder Beig

3) 2006(3) Law Weekly 936 (G.S.Gopalakrishnan and two others vs. Government of Tamil Nadu and two others)

10. I have considered the rival submissions carefully with regard to facts and citations.

11. The petitioner's main objection to acquisition proceedings is that the 4(1) Notification was issued in the name of her deceased father who passed away 15 years ago and therefore she was prevented from making an effective representation by participating in the 5A enquiry. The crux of the argument of the learned counsel for the petitioner was also that once section 4(1) notification was issued in the name of the dead person, then all the subsequent proceedings are vitiated and therefore the entire land acquisition proceedings including the 4(1) notification are to be quashed.

12. I am unable to accept this submission made by the learned counsel for the petitioner. It is an admitted fact that the father of the writ petitioner passed away 15 years ago and the writ petitioner did not take steps to change or mutate the revenue records after the demise of her father. It is also not the case of the petitioner that someone from her side informed the authorities

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

about the passing away of her father and in such circumstances, it cannot be said that the acquisition proceedings are vitiated on the ground that 4(1) notification itself was issued in the name of the dead person. Further, the writ petitioner herself admits in the affidavit that the lands were under the occupation of the cultivating tenant one Loganathan, thereafter the son of the said Loganathan. A persual of the 4(1) notification shows that the name of the petitioner's father and one Purushothaman were included for the lands in R.S. No.69/5. The said Purushothaman is the son of the Loganathan, who was the cultivating tenant at the time of petitioner's father. The said Purushothaman, the present cultivating tenant was personally served with the 4(1) notification on 2.11.1995 itself. Therefore I do not find any infirmity in the service of notice by the respondents and on that ground, land acquisition proceedings could not be challenged.

13. In 1997(6) SCC 207 (cited supra), the Honourable Supreme Court held as follows:

> "As noted above mutation was effected in September 1995. The Division Bench has observed that the Collector would have been aware of the pendency of the applications of the writ petitioners for mutation of lands in their names when the same were pending in his office. The Bench in effect observed that it was a case where the right hand did not know what the left hand was doing. This observation sounds good, but knowing the working of the government offices it appears to have no place. Of course, the Collector could have asked for a report from the prescribed authority concerned if any application for mutation of the land was pending with him. But that would be expecting too much from the Collector. It is no part of the duty of the Collector to make a roving inquiry into the ownership of the persons. We are of the opinion that the requirements of the law were met when notices were served upon the recorded owners as per the Record of Rights. Again we do not think in a case like the present one, it is for the Collector to make enquiries from the registration office to find out if the land had since been sold by the recorded owners. In Winky Dilawari vs Amritsar Improvement Trust(1996(II) SCC 644) this Court observed that the public authorities were not expected to go on making enquiries in the Sub-Registrar's office as to who would be the owner of the property. The Collector in the present case was thus justified in relying on the official record being the Record of Rights as to who were the owners of the land sought to be requisitioned and prudence did not require any further enquiry to be made. We are therefore of the view that notices were properly

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

served under Section 3(2) of the Act on the owners of the land".

14. In the above decision the Supreme Court observed that it is no part of the duty of the Collector to make a roving enquiry into the ownership of the person and that would be expecting too much from the Collector. The requirements of law were met when notices were served upon the recorded owners as per the record and the public authorities are not expected to go on making enquiries as to who would be the owner of the property.

15. In 2006 (3) Law Weekly 936 (cited supra), a Division Bench of this Honourable Court clearly held that the normal principle that a proceeding against a dead person is a nullity, cannot be imported to proceedings under the Land Acquisition Act, 1894 unless it is established that the factum of death was brought to the notice of the acquiring authorities at the appropriate stage. The relevant portion reads as follows:

"15. Thus, it could be seen from the law laid down by the Apex Court that a distinction was always maintained between judicial/quasi-judicial proceedings and other proceedings. In so far as the scheme of the Land Acquisition Act, 1894 is concerned, it envisages various types of notices at various stages. Section 4(1) notification is required to be gazetted followed by publication in two dailies having circulation in the locality and a local publication. The opportunity provided under Section 5-A is actually for 'persons interested' and not necessarily the land owners. This enquiry is followed by a Section 6 declaration and the Act thus provides innumerable opportunities to "persons interested" in objecting to the acquisition. The Land Acquisition Act does not limit its reach to "owners of land", but enables any person interested in the land to have a say. Moreover, the liability of the acquiring authorities to serve a notice of enquiry is also restricted only to persons whose names find a place in the revenue records. When the Act does not even make it obligatory for the acquiring authorities to conduct a roving enquiry to find out the actual owners, beyond the names reflected in the revenue records, it cannot be expected of the acquiring authorities to find out if the patta holder is alive or dead".

"17.Therefore, in our considered opinion, the normal principle that proceedings against a dead person are a nullity, cannot be imported to proceedings under the Land

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Acquisition Act,1894, unless it is established that the factum of death was brought to the notice of the acquiring authorities at the appropriate stage. Hence, the order of the learned Judge does not call for any interference and the writ appeal is dismissed without any order as to costs."

16. The above decision of the Division Bench is very much binding on me and on that basis, the writ petition is necessarily to be dismissed as devoid of merits.

17. As rightly submitted by the learned Additional Government Pleader nothing survives in the writ petition itself as the award was passed on 27.3.1997 and the lands were taken possession on 11.8.1997 which day the lands were also delivered to the requisition department. In such circumstances, I find force in the submission that no writ petition could be filed challenging the acquisition proceedings after the award has been passed. From the records it is seen that the writ petition itself was filed on 7.10.1998 and the same was admitted on 8.10.1998 and on that day, an interim stay of dispossession alone if possession has not yet been taken was passed by this Court. Considering the fact that the award was passed on 27.3.1997, possession was taken on 11.8.1997 and the writ petition itself was filed challenging the acquisition proceedings on 7.10.1998, nothing survives in the writ petition as, after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder as held by the Honourable Supreme Court in the decision reported in AIR 2000 SC 671 (cited supra),the relevant portion reads as under:

"17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of recent cases (C. Padma vs Dy. Secretary to the Government of Tamil Nadu reported in 1997(2) SCC 627. This Court observed as below:

"The admitted position is that pursuant to the notification published under Section 4(1) of the Land Acquisition Act,1894 (for short "the Act") in GOR No.1392 Industries dated 17.10.1962, total extent of 6 acres 41 cents of land in Madhavaram village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasiua by Tvl. Reichold Chemicals India Limited, Madras. The acquisition proceedings had become final and possession of the land was taken on 30.4.1964.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co., which is a subsidiary of Reichold Chemicals India Limited. It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in G.O. Ms. No.816, Industries, dated 24.3.1971 in favour of another subsidiary company, Shri Rama Vils Service Limited., the 5th respondent which is also another subsidiary of the company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in G.O. Ms. No. 439 Industries, dated 10.5.1985. In G.O.Ms. No.546 Industries, dated 30.3.1986, the same came to be approved of. Then the appellants challenged the original G.O.Ms. No.1392 Industries dated 17.10.1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus, the writ petition and the writ appeal came to be dismissed.

18. Similar is the view in an earlier decision of this Court in the case of Municipal Corporation of Greater Bombay vs Industrial Development Investment Company Private Limited reported in (1996) II SCC 501: (1996 AIR SCW 3871:AIR 1997 SC 482). Incidentally, the decision last noted was also on the land acquisition and requisition under the Maharashtra Regional and Town Planning Act, 1966 and in para 29 of the report, this Court observed:

"It is well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4 (1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches"

18. In the result, there are no merits in the writ petition and the same is dismissed as devoid of merits. No costs. The W.M.P.No.23781/98 is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sks

To

1. The Secretary,Revenue Department
   Union Territory of Pondicherry,
   Pondicherry.

2. The Deputy Collector
   Land Acquisition Officer, Pondicherry.

1 cc to Mr.T.R. Rajaraman, Advocate, Sr. 22941
1 cc to Sr. Governmetn Pleader cum Sr. Public Prosecutor, Pondicherry, Sr. 22928

W.P.15740/98.

WEB COPY

SSV (CO)
kk 20/4

https://hcservices.ecourts.gov.in/hcservices/